

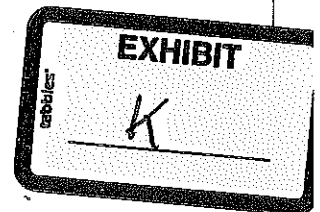
HERRING & MILLS

for your life

Herring & Mills, PLLC
434 Fayetteville St., Suite 1860
Raleigh, NC 27601
919.821.1860 fax 919.821.1816
www.foryourlife.com

Statement Date: August 31, 2010
Statement No. 56807
Account No. 210014.002 F
Page: 1

RE: Agency Termination



Fees

		Hours	
04/01/2010			
TLL	Schedule publication;	0.40	n/c
04/02/2010			
TLL	Draft pretrial and final TPR Orders;	0.60	n/c
04/19/2010			
TLL	Work on birthfather issue;	1.50	n/c
04/21/2010			
SJK			n/c
TLL	Birthfather/Birthmother issue; Conference with BDM; Run acurrint on birthmother;	2.30	n/c
TLL	Draft subpoena re length of stay at shared residence by birthmother and birthfather;	0.20	n/c
04/23/2010			
TLL	Draft Notice and birthfather documents; Copy, tag and send via FedEx;	0.60	n/c
04/27/2010			
SJK	Received email re: birthfather's version of living with birthmother.	0.20	n/c

Please Detach and Return This Portion With Your Remittance

Please Charge \$ _____ on the following:

☐ Visa ☐ MasterCard ☐ Discover

Card Number

Exp. Date (required)

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Security Code

Amount Remitted: _____

Check No.: _____

Statement Date: 08/31/2010

Statement No. 56807

Account No. 210014.002

INTEREST CHARGED ON UNPAID BALANCE AFTER THIRTY DAYS - 1% PER MONTH

Account No. 210014.002
RE: Agency Termination

Statement Date: 08/31/2010
Statement No. 56807
Page No. 2

		Hours	
04/28/2010			
SJK	Reviewed Preliminary Order and final TPR order.	0.40	n/c
04/30/2010			
TLL	Revise pretrial and final orders;	0.50	n/c
05/06/2010			
TLL	Talk with social worker re any updates re birthfather;	0.10	n/c
05/11/2010			
TLL	Draft Affidavit of Publication; Prepare to send to clerk for filing;	0.30	n/c
05/12/2010			
TLL	Forward pretrial order to opposing counsel;	0.10	n/c
SJK	Prepared for and attended pretrial hearing.	0.30	n/c
05/18/2010			
TLL	Review outline for birthfather; Draft time line for EPH & BDM;	1.00	n/c
05/19/2010			
TLL	Finish up draft questions and e-mail to directors;	0.30	n/c
05/24/2010			
TLL	Prepare file for TPR court;	0.10	n/c
6/1/2010			
SJK	Attended court.	0.50	n/c
TLL	E-mails to/from EPH; Reprint letter for BDM's review;	0.10	n/c
08/20/2010			
TLL	Pull new criminal check for birthfather;	0.50	n/c

Expenses

04/23/2010	Express Mail Federal Express	n/c
04/23/2010	Express Mail Federal Express	n/c
05/13/2010	Publication Expense The Herald Sun	374.88
	Total Expenses	374.88
	Total Current Work	374.88

Payments

8/26/2010	Payment	-374.88
	Balance Due	<u>\$0.00</u>

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Statement Date: October 31, 2010
Statement No. 57377
Account No. 210014.004 M
Page: 1

RE: Contested Adoption

Fees

		Hours	
03/2010			
TLL	Draft DHHS letter and request birth certificate;	0.40	n/c
07/2010			
TLL	Complete and send in fingerprint information;	0.30	n/c
03/2010			
ASF	Medical records reviewed and application letter completed for adoption assistance.	1.30	n/c
19/2010			
BDM	Conference with [REDACTED] telephone call with birth father. Service of notice of adoption proceeding.	0.60	n/c
21/2010			
BDM	Review electronic mails and outline discovery procedure to address birth father.	0.40	110.00
27/2010			
TLL	Conference with clients, BDM, EPH re status and plan moving forward; Review outlines re facts between BM & BF; Search for places of employment; Search internet for current whereabouts of BF;	2.50	337.50
TLL	Phone conference with social worker; Call birthmother re updated Affidavit;		

Please Detach and Return This Portion With Your Remittance

Please Charge \$_____ on the following:

☐ Visa ☐ MasterCard ☐ Discover

Card Number

Exp. Date (required)

Card Holder Signature

Security Code

Amount Remitted: _____

Check No.: _____

Statement Date: 10/31/2010

Statement No. 57377

Account No. 210014.004

INTEREST CHARGED ON UNPAID BALANCE AFTER THIRTY DAYS - 1% PER MONTH

Account No. 210014.004
RE: Contested Adoption

Statement Date: 10/31/2010
Statement No. 57377
Page No. 2

		Hours	
	Phones wouldn't connect; Called birthmother and left voicemail message;	0.20	27.00
10/06/2010			
BDM	Review electronic mail from [REDACTED] birth father request for DNA testing and notes from telephone call with birth mother - time line and consent not necessary issues.	0.90	247.50
TLL	Telephone conference with social worker re birthmother and scheduled phone call;	0.20	27.00
TLL	Phone conference with birthmother; Prepare memo to the file; Begin drafting BM Affidavit;	1.00	135.00
TLL	BF called social worker re DNA instructions; Conference with EPH and BDM; Return social worker's call;	1.00	135.00
10/09/2010			
TLL	Request medical records from ER;	0.30	40.50
11/17/2010			
TLL	Work on obtaining medical records from ER visits for birthmother;	0.50	67.50
12/25/2010			
TLL	Check on status of medical records;	0.10	13.50
1/31/2010			
TLL	Review medical documents of birthmother; E-mail EPH re same;	0.30	40.50
2/1/2010			
J10			
TLL	Revise letter and draft contract; Talk with social worker;	0.50	75.00
01/2010			
DPF	1) Listened to conference call between BDM and client regarding strategy for responding to BF Custody Complaint. 2) Researched and worked with Corine to locate sample Motions to Stay and Motions for Paternity Testing. 3) Reviewed relevant law and read sample motions and part of case file.	3.00	450.00
TLL	Phone conference with clients and BDM and [REDACTED] Update e-outline;	2.00	300.00
02/2010			
DPF	Finalized brief for motion to dismiss and sent to Parker.	1.50	225.00
04/2010			
DPF	1) Drafted Motion to Stay and Motion for Paternity Testing. 2) Drafted Motion for Extension of Time (to answer complaint) 3) Drafted Motion to Continue (in part, waiting on information from L.Seaward) 4) Researched ability to get public assistance information re: BM. (Sent e-mails to colleagues requesting assistance.) 5) Emails (2) to BDM w/ draft motions and to BDM and EPH re: Motion to Continue and Motion to Extend Time to Answer.	6.80	1,020.00
TLL	E-mail clients inquiring how they would like to proceed with adoption assistance;	0.10	15.00
05/2010			
DPF	[REDACTED]		

		Hours	
	1) Timeline re: BM activities, BF communication with ACH, and the inconsistency of the information we received. [REDACTED] complete subpoenas to obtain financial information fr: alleged BF: a) From 2008 forward need hours worked and amounts earned. b) Britthaven, Dorothea Dix, Maxim Healthcare		
DPF	3) Subpoena Durham Tech and determine classes enrolled in, tuition paid, any financial aid or scholarship money provided. 1) Meet with Bobby (X2) to (a) review Motion to Stay and for Paternity and discuss changes; and (b) Update on findings from review of timeline and exhibits from Complaint for Custody. 2) Develop brief timeline. 3) Revise Motion to Stay.	1.00	150.00
TLL	Review outline and prepare for meeting with D. Blyskal;	4.60	690.00
TLL	Conference with [REDACTED] re outline and subpoenas to draft; Research Registered Agents for service; Draft subpoenas; Speak with BDM re birthmother affidavit;	1.50	225.00
BDM	Outline response to custody action - motion to dismiss, motion to stay, motion for paternity testing. Review termination action and order.	2.00	300.00
		2.00	600.00
/06/2010			
JSS	Email to Judge Christian's Family Court Case Coordinator, re: possibility of having 15-minute motion heard prior to temporary hearing on child custody	0.20	26.00
DPF	1) Revised Motion to Stay and for Paternity Testing and met with Bobby to discuss. 2) Wrote Motion and Order for Extension of Time to Answer Complaint. 3) Drafted Motion to Dismiss		
	4) Met with Bobby and [REDACTED] and discussed: (a) sequence of orders; (b) basis for Motion to Dismiss; (c) need to calendar and prepare CNN; (d) need to prepare Motion for Protective Order; (e) need to be sure the courtroom is cleared given the confidentiality of the pending actions.	7.00	1,050.00
TLL	Draft cover letters and prepare 3 additional subpoenas for service; Revise birthmother affidavit; Research subpoena information for birthmother information; Search Register of Deeds for property owner information re birthmothers lease, etc.; Search Secretary of State for Registered Agents;	2.50	375.00
07/2010			
DPF	1) Forwarded Motion and Order for Extension of Time to Answer Complaint to [REDACTED] and requested he wait until direction from Parker or I to file. 2) Forwarded Motion to Dismiss to Bobby and Parker and met with Bobby on it. 3) Began writing brief for Motion to Dismiss to send to Parker. She will review. 4) Met with [REDACTED] on CNN.		
BDM	5) Read email (1) from [REDACTED]: subpoenas. Revise motion to dismiss custody action and affidavit from [REDACTED]	6.00 0.40	900.00 120.00
08/2010			
DPF	1) Wrote Brief to support Motion to Dismiss. 2) Finalized Motion to Dismiss with Bobby and Parker.	5.00	750.00
11/2010			
JSS	Responsive email to DMB, re: clarification on issues to be set for hearing	0.10	13.00

Account No. 210014.004
RE: Contested Adoption

Statement Date: 10/31/2010
Statement No. 57377
Page No. 4

		Hours	
JSS	Drafting Calendar Request and Notice of Hearing on Motion to Dismiss	0.40	52.00
JSS	Met with DMB, re: received response from opposing counsel regarding potential hearing date for Motion to Dismiss; opposing counsel on secured leave and object to hearing date	0.10	13.00
DPF	1) Spoke to Bobby about the brief to support the motion to dismiss and about the status of the case. 2) Sent updated version of brief to Parker and Bobby. 3) Reviewed information from plaintiff's employer, sent to us in response to subpoena. 4) Spoke to [REDACTED] about proceeding forward with subpoenas to Durham County re: public services received by BM. 5) Spoke to [REDACTED] about (a) her secured leave on 10/18 and about consenting to Motion to Continue on 10/21. 6) Had Motion to Dismiss filed and served. 7) Spoke to [REDACTED] about strategy for getting Motion to Continue signed -- drafting a letter to Judge Christian.	5.80	870.00
TLL	Return phone call from Community College re our subpoena; Receive correct information, revise and send out; Review subpoena response from nursing home; Draft Affidavit for apartment complex;	0.70	105.00
EPH	Draft letter to [REDACTED]	0.20	60.00
/12/2010			
KET	Revisions to letter to Judge re Motion to Continue and review of local rules in regard to opposing counsel's responsibility to respond via an Objection to Motion to Continue.	0.40	80.00
JSS	Applying revisions to Motion to Continue and drafted Certificate of Service; Drafted Order to Continue; Finalized cover letter for submission to Judge Christian; All documents to DMB for review and signature	0.50	65.00
JSS	Drafting Certificate of Service, re: serving Motion to Continue upon co-Defendant; To DMB for review and signature	0.20	26.00
DPF	1) Letter to Judge Christian re: Motion to Continue custody 06 CVD 16180. 2) Conference call with adoptive parents re: status of case, work accomplished, waiver/informed consent, and retainer owed. 3) Revised Motion for Protective Order and forwarded to Parker and Bobby. 4) Strategy discussion with Parker. 5) Updates from [REDACTED] on subpoena responses and efforts to obtain information from Durham Public Assistance on BM.	4.90	735.00
TLL	Work on subpoenas for county information on birthmother; Leave voicemail message for county attorney;	0.50	75.00
TLL	Phone conference re status update with DMB and clients;	0.80	120.00
/13/2010			
DPF	1) Revised Motion for Protective Order per Bobby's suggestion and spoke with [REDACTED] about calendaring in Special Proceedings. 2) Developed Conflict Waiver form and sent it to client via e-mail and USPS (with SASE for return). 3) Revised (to add details about Notice of alleged biological father) Motion to Stay and Paternity and sent to Bobby for final review before starting brief on it.	3.40	510.00
TLL	Research information re public assistance for subpoenas;	0.50	75.00

		Hours	
11/14/2010			
JSS	Call to opposing counsel, re: scheduling Motion to Dismiss with Hearing on Temporary Custody; left voicemail	0.10	13.00
JSS	Drafting Calendar Request and Notice of Hearing for Motion to Dismiss, re: new potential hearing date in response to Judge Christian's denial of Motion to Continue;		
	To DMB for review and signature pending response from opposing counsel on new potential hearing date	0.30	39.00
JSS	Applied BDM and DMB's revisions to Calendar Request and Notice of Hearing, re: addition of Motion to Stay and Motion for Paternity Testing for issues to be heard;		
	Call to opposing counsel, re: adding Motion to Stay and Motion for Paternity Testing to issues to be set	0.40	52.00
DPF	1) Reviewed and responded to e-mail from Judge Christian's case coordinator denying Motion to Continue.		
	2) Exchanged e-mails with Parker re: calendaring Motion to Dismiss and Motions to Stay and for Paternity.		
	3) Met with Bobby to strategize litigating case next Thursday. Discussed facts and arguments of each motion.		
	4) Finalized Motions to Stay and for Paternity Testing, signed and provided to paralegal/runner along with Calendar Notices and filed with court and served to opposing counsel.	3.60	540.00
TLL	Telephone call with housing authority re birthmother; Leave voicemail message for Food & Nutrition representative;	0.30	45.00
TLL	Contact Agency re contact information for WIC; Send subpoena via certified mail;	0.40	60.00
11/15/2010			
KET	Meeting with DB re preparation for trial.	0.90	180.00
DPF	1) Drafted brief for Motions to Stay and for Paternity and forwarded to Bobby.		
	2) Worked with [REDACTED] on getting Affidavits from those we have subpoenaed for business records.		
	3) Worked with [REDACTED] on contacting those to whom we forwarded subpoenas but have not responded.		
	4) Met with BDM after receiving judge's decisions on hearing additional motions.		
	5) Reviewed medical records and asked [REDACTED] to get affidavit of business records from Duke.	3.10	465.00
TLL	Draft WIC subpoena;	0.30	45.00
TLL	Revise subpoena of BM/BF residence; Speak with registered agent re Affidavit; Speak with DMB re Business Record;	0.50	75.00
11/18/2010			
DPF	1) Compile list of items needed for trial on Thursday to include pleadings, exhibits, case law, statutes.		
	2) Met with Bobby to go through timeline and list and strategize about Thursday's trial.	2.10	315.00
DPF	Trial Preparation.	3.30	495.00
TLL	Call hospital re Affidavit of Business Records; Draft letter;	0.40	60.00
TLL	Phone call re status with DMB and [REDACTED] Receive phone calls from landlord and [REDACTED] re subpoena responses;	0.60	90.00
BDM	Prepare for hearing - temporary custody, motion to dismiss, motion to stay, and motion for paternity testing.	1.50	450.00

Account No. 210014.004
RE: Contested Adoption

Statement Date: 10/31/2010
Statement No. 57377
Page No. 6

		Hours	
10/19/2010			
JSS	Finalizing letter to opposing counsel; To EPH for review and signature	0.20	26.00
JSS	Email to opposing counsel, re: letter regarding meeting with Judge Christian	0.10	13.00
JSS	Researched case law prevalent to case, Krauss v. Wayne County DSS, 493 S.E.2d 428	0.10	13.00
JSS	Drafting Certificate of Service for Order to Continue [Denied]; To DMB for review and signature	0.20	26.00
DPF	Trial preparation	7.00	1,050.00
EPH	Reviewed case with DMB and prepare	0.80	240.00
10/20/2010			
DPF	1) Court with Parker Herring to meet with [REDACTED] and Judge Christian regarding scheduling of the case. Case to be continued until DNA can be obtained from Plaintiff and OC can research. 2) Met with Bobby to update him on the status of the case. 3) Telephone call with APs to let them know case was continued and opposing counsel agreed to DNA test. 4) Compiled letter with statutory language and case law and provided to Judge Christian and opposing counsel offering our basis to stay custody and consolidate to juvenile court. 5) Hand delivered packet to Judge Christian.	5.00	750.00
BDM	Telephone call with Wake County Attorney - subpoena to DSS for public assistance records.	0.20	60.00
EPH	to court to meet with [REDACTED] and Judge Christian in chambers	1.40	420.00
10/21/2010			
DPF	1) Discussed information required of LL with [REDACTED] and BDM. 2) Called Durham County Atty and left message re: documentation on BM. 3) Met with Bobby on Durham and Guilford County re: documentation on BM. 4) Reviewed 10 NCAC 69 re: research on confidentiality, release of DSS records (not billable).	1.00	150.00
DPF	Meeting with Bobby on: 1) Medical Records disclosure and our ability to use in adoption. 2) Motion to Order DNA. 3) Discovery on Birth Father. 4) Discovery on Birth Mother. 5) Evidence rules and excluding Birth Mother's affidavit. 6) Update on opposing counsel position and whether we may be in court on Friday.	1.40	210.00
DPF	Met with [REDACTED] to obtain proof that Birth Mother was served. Since the USPS provided no date of pick-up (by birth mother), I verified with USPS the date of pick-up.	0.20	30.00
DPF	Conversation with Maxim Healthcare re: information requested by subpoena.	0.20	30.00
TLL	Call DSS attorney; Follow up with medical records re affidavit; E-mail D. [REDACTED] and BDM re same;	0.40	60.00
TLL	Draft letter to clerk requesting Writs of Possession;	0.20	30.00

		Hours	
03/22/2010			
DPF	Met with Bobby and [REDACTED]: 1) CNN versus straight to juvenile court. 2) Need to do an order for the paternity test (as he is moving forward). 3) Discovery on alleged BF. 4) Motion to exclude BM.	0.60	90.00
DPF	1) Drafted Motion and Order for Paternity. 2) Sent Motion and Order to Bobby. 3) Met with [REDACTED] and put together timeline requested by Parker Herring	1.00	150.00
DPF	Forwarded information from BF's landlord to opposing counsel.	0.10	15.00
TLL	Work on timeline; Talk with KEM re birthmother and medical records;	0.50	75.00
TLL	Discuss timeline with DMB and e-mail EPH re same;	0.30	45.00
DPF	1) Met with [REDACTED] and Bobby re: exclusion of affidavit under hearsay exceptions / local rules. 2) Discussed the baby getting DNA again to be sure and minimize questions re: chain of custody. 3) Discussed DNA process with Corine at [REDACTED]	0.80	120.00
1/24/2010			
BDM	Revise order to remove temporary custody from court calendar and order for paternity testing	0.50	150.00
BDM	Conference with [REDACTED] Motion to transfer case to juvenile court, order for paternity testing, discovery requests, motion to strike affidavit from [REDACTED] custody file and exclude Joyce as a witness.	0.50	150.00
1/2			
10			
JSS	Email to opposing counsel, re: proposed Order for Paternity Testing	0.20	26.00
DPF	1) Reviewed [REDACTED] response to law and caselaw re: forum for custody action with pending adoption. 2) Emailed Parker and Bobby re: response and sent letter. 3) Reviewed final version of paternity order. 4) Forwarded paternity order to [REDACTED] for approval. 5) Emailed [REDACTED] to move forward with getting DNA on baby.	0.80	120.00
DPF	Draft Discovery (RPD, Admissions, Interrogatories)	3.00	450.00
TLL	Contact [REDACTED] schedule DNA swab; E-mail to/from PTC;	0.20	30.00
26/2010			
DPF	1) Review and make final revisions to discovery. 2) Send discovery to Bobby for final review. 3) Send Motion and Order to Extend time to Answer Complaint [REDACTED] for filing today.	1.00	150.00
DPF	1) Telephone call with [REDACTED]: changes to Order for Paternity. 2) Red lined Order with changes and forwarded red-lined order to Bobby.	1.00	150.00
DPF	1) Reviewed additions to discovery documents. 2) Read various CNNs in files to prepare for our case. 3) Worked with [REDACTED] scheduling baby for DNA and for obtaining Writ of Possession case documents from Durham County. 4) Drafted CNN.	3.80	570.00
27/2010			
DPF	Reviewed Bobby's comment on revising Order per my conversation with [REDACTED] Made slight revisions and forwarded red-lined version [REDACTED] for review.	0.30	45.00
JSS	Drafting Certificate of Service for Motion for Extension;		

Account No. 210014.004
RE: Contested Adoption

Statement Date: 10/31/2010
Statement No. 57377
Page No. 8

		Hours	
TLL	To DMB for review and signature	0.20	26.00
	Work on scheduling DNA appointment; Send confirmation e-mail to clients, ACH & DMB;	0.20	30.00
	Courtesy Discount		-14,681.00
	For Current Services Rendered	123.20	4,994.00

Expenses

1/26/2010	Photocopy Charges Durham County Clerk of Court	2.00
	Total Expenses	2.00

Advances

1/21/2010	Filing Fee Durham County Clerk of Court	4.00
	Total Advances	4.00
	Total Current Work	5,000.00



Payments

1/20/2010	Payment	-5,000.00
1/1	Balance Due	\$0.00

Payment due within 15 days. We gladly accept Visa, MasterCard, and Discover.

Timekeeper: Changing a Timekeeper

► To change an existing timekeeper

1. From the **File** menu, select **Open**, and then click **Miscellaneous**.
2. By default, the **Timekeeper** tab is selected. Click the  button and select the desired timekeeper.
3. Make the desired changes.
4. Click  on the toolbar to save the changes.

Notes: You cannot change a timekeeper's **number** using this program; you must use the [Renummer Timekeeper](#) program.

Changes made to a timekeeper's **Name**, **Initials**, or **Level** will be reflected on existing work-in-process transactions and all subsequent reports and statements.

Changing a timekeeper's **Hourly Rate** will *not* affect any previously entered fee transactions. If you want previously entered transactions to reflect a new rate, use the [Change WIP Transactions](#) program (or *edit each fee transaction using the [Fee Entry](#) program*).

Depending on the changes made, corresponding changes may also need to be made to the System Configuration user file.

QuickBooks Note: If a change is made to a timekeeper name or initials, the corresponding change must be made to the QuickBooks Sales Rep List and/or Employee List.

See also: [Toolbar Buttons](#)

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[Reprint Single Updated Statement]

File Edit Statements Reports Maintenance Utilities View Window Help

Print Preview Find & Replace Undo Redo Cut Copy Paste

ID: 210014.002

Agent Number: 55188

Agent Information:

Agent Date: 04/26/2010

Fee Tax:	2500.00	0.00	0.00
Expense Tax:	0.00	0.00	0.00
Advance Tax:	0.00	0.00	0.00
Payments:	0.00	2500.00	

Agency Termination:

When a statement is reprinted, Tabs3 uses the current statement file, statement terminology, statement messages, printer settings, and current designer layout. Therefore, the layout of the reprinted statement of exactly match the original statement. Details regarding why a reprinted statement may not exactly match the original statement can be found in Help.



Press F1

MACRO OVER CAP 98% 87

Print Preview Find & Replace Undo Redo Cut Copy Paste

Timekeeper: Changing a Timekeeper

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See also: [Toolbar Buttons](#)

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[Reprint Single Updated Statement]

Statements Reports Maintenance Utilities View Window Help

File Edit View Options Window Help

ID: 210014.002

Agency Number: 55188

Agency Termination

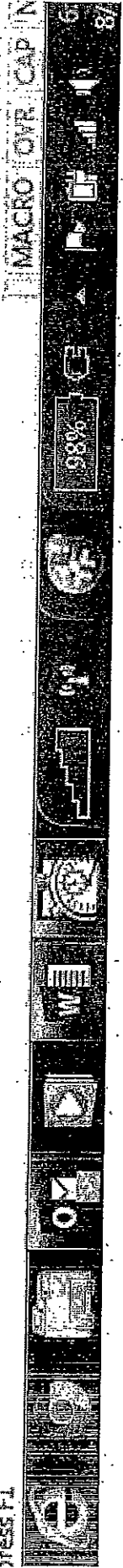
Print Information

Print Date: 04/26/2010

Fee Tax:	2500.00	0.00
Expense Tax:	0.00	0.00
Advance Tax:	0.00	0.00
Payments:	0.00	2500.00

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Press F1



I am employed as the office administrator and bookkeeper for Herring & Mills, PLLC.

The firm utilizes a software program called TABS3 for the time keeping and billing. I am the system administrator.

[REDACTED] were clients of the firm. [REDACTED] were assigned four account number 210014. [REDACTED] had four subaccounts numbered .001, .002, .003, and .004.

I am informed and believe that the firm did not routinely scan final billing statements in 2010 and hard copies were only retained for a relatively brief period of time, after which they were shredded.

Each time keeper has a unique number. Each time keeper is identified on the billing statement by the initials of that individual's name. There are a limited number of licenses for time keepers. Additional licenses may be purchased in batches at an added cost.

The TABS program does not retain exact images of final statements. It does allow a user to reprint an updated final statement from information retained in the system. *heeded?* April 26, 2010 # 55123. Feb 28, 2011 # 58606

An updated statement for [REDACTED] dated August 31, 2010, statement number 56807, account number 210014.002 appears as exhibit __.

Timekeeper licenses for former personnel have been reassigned to new personnel. New personnel utilize time keeper numbers previously assigned to a former employee.

On reprinted updated statements, like those attached here, time entries appear with the initials of the current time keeper rather than the initials of the former time employee who previously utilized the same time keeper number.

Time keeper number 17 was previously assigned to [REDACTED] who left the firm on [REDACTED] for maternity leave. Her employment was terminated on 9/8/10. *LAST ENTRY 05/26/10*

[REDACTED] joined the firm on 07/25/11. He was assigned time keeper number 17. Time entries for [REDACTED] are represented by the initials SJK.

An updated statement dated August 31, 2010, statement number 56807, account number 210014.002 appears as exhibit __. Several entries appear for SJK. The initials SJK represent [REDACTED]

Entries on the August 31, 2010 statement which are identified as being made by "SJK" were made by [REDACTED]

JUN 14 2011

I am employed as the office administrator and bookkeeper for Herring & Mills, PLLC.

The firm utilizes a software program called TABS3 for the time keeping and billing. I am the system administrator.

[REDACTED] were clients of the firm. [REDACTED] were assigned account number 210014. The Napiers had four subaccounts numbered .001, .002, .003, and .004.

I am informed and believe that the firm did not routinely scan final billing statements in 2010 and hard copies were only retained for a relatively brief period of time, after which they were shredded.

An updated statement for [REDACTED] dated August 31, 2010, statement number 56807, account number 210014.002 is attached hereto as exhibit _____. The statement show time entries for the period from April 1, 2010 through August 20, 2010.

The TABS program does not retain exact images of final statements. It does allow a user to reprint an updated final statement. An updated statement reflects subsequent system changes, such as changes to the firm logo that appears on the top left corner of the statement. An exact image of a final statement for printed on August 31, 2010 would have a logo for Herring, Mills & Kratt, PLLC, not Herring & Mills, PLLC as appears on the reprinted statement at exhibit _____.

An updated statement also reflects changes in time keeper numbers. Each time keeper has a unique number. Each time keeper is identified on the billing statement by the initials of that individual's name.

There are a limited number of licenses for time keepers. Additional licenses may be purchased in batches at an added cost. Timekeeper licenses for former personnel have been reassigned to new personnel to reduce cost. New personnel utilize time keeper numbers which were previously assigned to a former employee.

On reprinted updated statements, like those attached here, time entries appear with the initials of the current time keeper, rather than the initials of the former time employee who previously utilized the same time keeper number and made the actual entries.

On exhibit _____ time entries for [REDACTED] are represented by the initials TLL. [REDACTED] was a paralegal employed by the firm in 2010. [REDACTED] left the firm on _____. She was assigned time keeper number 12. Her time keeper

number has not been reassigned. The entries on the updated statement which are identified as being made by TLL were actually made by [REDACTED]

Time keeper number 17 was previously assigned to [REDACTED] left the firm on or about June 14, 2010 for maternity leave. She did not return to full time employment. Her employment was terminated on September 8, 2010.

[REDACTED] joined the firm on July 25, 2011. He was assigned time keeper number 17. Time entries for [REDACTED] are represented by the initials SJK.

On the updated statement dated August 31, 2010, several entries appear for SJK. The entries on the updated statement which are identified as being made by SJK were actually made by [REDACTED]

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
FILED DISTRICT COURT DIVISION
FILE NO. 10 JT 90

2010 MAY 26 P 3:53

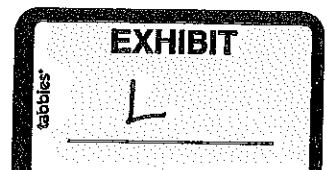
WAKE COUNTY, C.S.C. ORDER ALLOWING
) PETITION FOR THE TERMINATION OF
BY) PARENTAL RIGHTS

THIS CAUSE came on to be heard before the undersigned District Court Judge presiding on May 26, 2010, by way of a Petition for Termination of Parental Rights of Calvin or Kevin or Any Unknown Parent or Possible Parent of [REDACTED]. The Petitioner was represented by counsel, [REDACTED] of Herring Mills & Kratt, PLLC. Respondents Any Unknown or Possible Parent, were not present or represented. [REDACTED] was assigned as provisional counsel for Calvin or Kevin and was released by the Court at the pretrial hearing.

The Court, after reviewing the pleadings filed in this action and hearing testimony from Petitioner, makes the following:

FINDINGS OF FACT

1. Petitioner, A Child's Hope, LLC is a private child placement agency conducting business in and licensed by the State of North Carolina to place minors for adoption.
2. [REDACTED] is the mother of the minor child who is the subject of this action.
3. The name of the child as it appears on the child's birth certificate is [REDACTED]. He was born on January 9, 2010, in High Point, Guilford County, North Carolina.
4. On January 11, 2010 [REDACTED] surrendered custody of the minor child to Petitioner and executed a relinquishment, pursuant to G.S. § 48-3-701 *et. seq.*, for purposes of the adoptive



placement of the minor child with an adoptive couple to be chosen by the agency. The revocation period has expired and no revocation has been received by Petitioner or the Clerk.

5. On January 20, 2010, Petitioner transferred physical custody of the minor child to an adoptive couple and the child has remained in their care and has resided in Wake County, North Carolina since that time. The adoptive parents have a completed pre-placement assessment recommending them for adoptive placement and have filed a petition to adopt the child.

6. On January 20, 2010, the prospective adoptive parents filed a petition in Wake County, North Carolina to adopt this child.

7. [REDACTED] identified a man known to her only as "Calvin or Kevin" as the biological father of this child.

8. A Petition for Termination of Parental Rights was filed on March 22, 2010. Petitioner filed a Motion to Permit Service by Publication on March 25, 2010 and an Order Permitting Service by Publication was entered on March 31, 2010.

9. A preliminary hearing to determine the identity and whereabouts of Respondents, Calvin or Kevin or Any Unknown or Possible Parent, did occur within ten days of the filing of the Petition as required by N.C.G.S. §7B-1105.

10. A Notice to Respondents, Calvin or Kevin or Any Unknown or Possible Parent, in the form required by N.C.G.S. §48-2-402, was published on April 7, 14 & 21 in the *Herald Sun* in the vicinity of Durham County, North Carolina. The time allowed for Respondents to respond expired on May 17, 2010 and no purported birth father has filed a response with this Court.

11. An adjudicatory hearing on the petition was conducted within 90 days from the date of filing of the Petition as required by N.C.G.S. § 7B-1109(a).

12. [REDACTED] was not married at the time that this child was born or within the ten months immediately preceding the birth of this child or prior to the filing of the Adoption Petition.

13. Paternity of this child has not been determined judicially or by scientific means.

14. No person has established paternity of this child by affidavit which has been filed with the central registry maintained by the Department of Health and Human Services.

15. No person has legitimated the child pursuant to the provisions of G.S. 49-10 or filed a petition for that purpose.

16. No person purporting to be the father of [REDACTED] has provided substantial financial support or consistent care to [REDACTED]
[REDACTED]

17. Pursuant to N.C.G.S. § 7B1111(a)(5), no Respondent has:

- a. Established paternity judicially or filed an affidavit of paternity of the child.
- b. Legitimated the child pursuant to N.C.G.S. §49-10 or filed a petition to do so;
- c. Legitimated the child by marrying the birthmother; or
- d. Provided substantial financial support or consistent care with respect to the child and the mother.

18. There are sufficient facts to warrant a determination by clear, cogent and convincing evidence that grounds exist for termination of parental rights under N.C.G.S. §7B-1111(a)(5).

19. Considering the factors in N.C.G.S. §7B-1110, it is in the best interest of the minor child that the parental rights of Respondents, Calvin or Kevin or Any Unknown or Possible Parent, be terminated in that:

- a. Respondents have not established paternity judicially or filed an affidavit of paternity of the child.
- b. Respondents have not legitimated the child pursuant to N.C.G.S. § 49-10 or filed a petition to do.
- c. Respondents have not legitimated the child by marrying the birthmother.

- d. Respondents have not provided substantial financial support or consistent care with respect to the child and the mother.
- e. The biological mother has relinquished custody of the child to Petitioner for purposes of adoptive placement.
- f. The prospective adoptive parents have filed a petition seeking to adopt this child and have had physical custody of the child since January 20, 2010, having formed a parent-child relationship.
- g. The child was born on January 11, 2010 and is now four months old.
- h. The biological mother has indicated that she believes that it is in the best interest of the child to be adopted by the prospective adoptive parents and that the rights of any potential birth father(s) of the child should be terminated.
- i. The biological parents have not had physical custody of the child and have not created a bond with the child.
- j. Post placement reports based upon home visits conducted on January 25, 2010 and March 1, 2010, indicates that the adoptive parents are loving and nurturing and provide a stable environment that meets the child's needs.
- k. Post placement reports further indicate that the child is thriving and meeting developmental guidelines. There is a high likelihood that the adoption of this child will be finalized.
- l. The termination of parental rights will aid in the accomplishment of the placement of this child.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this action under N.C.G.S. §7B-1101.
2. This Petition is not filed to circumvent the provisions of Chapter 50A, the Uniform Child Custody Jurisdiction and Enforcement Act, and this Court has jurisdiction to make a child custody determination pursuant to N.C.G.S. §50A.
3. Considering the factors in N.C.G.S. §7B-1110, there are sufficient facts to warrant a determination by clear, cogent and convincing evidence that grounds exist for termination of parental rights under N.C.G.S. §7B-1111(a)(5).
4. It would be in the best interests of the minor child if the parental rights of the Respondents, Calvin or Kevin or Any Unknown or Possible Parent, were terminated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the parental rights of Respondents, Calvin or Kevin or Any Unknown or Possible Parent, of the minor child are terminated.

This the 26 day of May, 2010.


DISTRICT COURT JUDGE PRESIDING

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN RE THE MATTER OF THE)
ADOPTION OF BABY BOY DOE)

FILED

2010 NOV -8 P 3:36

WAKE COUNTY, CSC

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 10 SP 364

MOTION FOR CONSENT
NOT NECESSARY

Petitioners move the Court for an order determining that the consent of Respondent, [REDACTED] to this proposed adoptive placement is not required pursuant to N.C.G.S. §§ 48-3-601 and 48-3-603 and respectfully show the Court that:

1. [REDACTED] gave birth to for [REDACTED] a Baby Boy Doe on January 9, 2010 in High Point, Guilford County, North Carolina. Ms. Jones identified "Kevin or Calvin" as the biological father of the child.

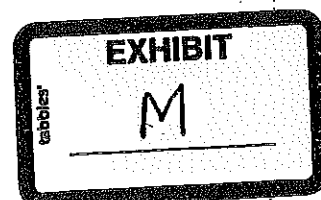
2. Respondent and [REDACTED] are not currently and have never been married.

3. On March 22, 2010, pursuant to §§ 48-3-201(d) and 7B-1103(a)(3), a Petition for the Termination of Parental Rights of Calvin or Kevin or Any Unknown or Possible Parent was filed in Wake County District Court, *In Re K.M.J., A Minor Child*, file number 10 JT 90.

4. On March 31, 2010, pursuant to N.C.G.S. § 7B-1105(d), an Order was signed by the Court in case 10 JT 90 permitting service of process by publication upon Calvin or Kevin or Any Unknown or Possible Parent. *The Herald Sun* was the forum for service of process by publication as it is qualified for legal advertising in accordance with N.C.G.S. §§1-597 and 1-598 and it is circulated in Durham County, North Carolina.

5. Respondent received notice by service of process by publication in *The Herald Sun* because, by information and belief, Respondent lived in Durham, NC or Durham County, NC during the publication period.

6. Respondent did not file a response with the Court under file number 10 JT 90.



7. On May 26, 2010, the parental rights of "Calvin or Kevin or Any Unknown or Possible Parent" were terminated pursuant to N.C.G.S. § 7B-1110 and § 7B-1111(a)(5) in case 10 JT 90.

8. Pursuant to N.C.G.S. § 48-3-603(a)(1), the consent of Respondent [REDACTED] to the adoption of this minor child is not required in that his parental rights have been terminated.

WHEREFORE, Petitioners pray the Court:

1. Issue an order that the consent of Respondent [REDACTED] is not required for Petitioners to adopt the said child.

2. Grant Petitioners such other and further relief as may be just and proper.

This the 8th day of November, 2010.

HERRING MILLS & KRATT, PLLC

[REDACTED]

Two Hannover Square, Suite 1860
Post Office Box 1677
Raleigh, North Carolina 27602
Telephone: (919) 821-1860
Attorney for Petitioners

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
FILED DISTRICT COURT DIVISION
FILE NO. 10 SP 364

2010 NOV 12 P 2:57

IN RE THE ADOPTION OF
BABY BOY DOE

WAKE COUNTY, CSC

v.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion for Consent Not Necessary, Motion for Protective Order and Notice of Hearing for November 23, 2010, were served upon the Respondent by depositing a copy of same in the United States Mail, postage prepaid, first class and addressed as follows:

[REDACTED]

This the 12th day of November, 2010.

HERRING MILLS & KRATT, PLLC

[REDACTED]

Two Hannover Square, Suite 1860
Post Office Box 1677
Raleigh, North Carolina 27602
(919) 821-1860
Attorney for Petitioner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 10 JT 90

**MOTION FOR RELIEF FROM
JUDGMENT**

Respondent [REDACTED] moves this Court pursuant to Rule 60 of the North Carolina Rules of Civil Procedure for relief from a judgment entered on or about May 26, 2010. Respondent respectfully shows the Court that:

1. Upon information and belief, Petitioners are citizens and residents of Wake County, North Carolina.
2. Respondent is a citizen and resident of Durham County, North Carolina.
3. On January 9, 2010 [REDACTED] gave birth to the minor child in Guilford County, North Carolina.
4. Respondent has been proven to be the biological father of the minor child through DNA testing.
5. Upon information and belief on January 20, 2010 Petitioners filed a Petition to adopt the minor child, Wake County file number 10 SP 364.
6. Upon information and belief, on March 22, 2010, a Petition for the Termination of Parental Rights of Calvin or Kevin or Any Unknown or Possible Parent was filed in Wake County District Court.
7. Upon information and belief, on March 31, 2010, an Order was signed by the Court permitting service of process by publication upon Calvin or Kevin or Any Unknown or Possible Parent. The Herald Sun was the forum of service of process by publication.
8. Upon information and belief, Petitioners published a notice of service of process by publication in The Herald Sun on April 7, 14, and 21, 2010. The notice in The Herald Sun listed a May 17, 2010 deadline for Petitioner to respond to the notice.
9. [REDACTED] had told Respondent that the minor child was still-born. However, in April 2010, [REDACTED] informed Respondent that the minor child was alive and was placed with a Child's Hope adoption agency.

EXHIBIT

2

10. Respondent contacted A Child's Hope and informed the staff at A Child's Hope that he was the biological father and he did not agree to an adoption of the minor child.
11. On or about April 23, 2010 the counsel for Petitioners sent Respondent notice of the adoption proceeding along with a Relinquishment of Minor for Adoption by Parent or Guardian and requested that Respondent execute the relinquishment. The letter and notice are attached hereto as Exhibit A and incorporated herein by reference.
12. On April 26, 2010, Respondent filed his objection and response to the adoption proceeding and served it on Petitioner's counsel. Respondents' objection is attached hereto as Exhibit B and incorporated herein by reference.
13. Even though counsel for Petitioners knew that Respondent claimed to be the biological father, they did not attempt to serve Respondent personally with the Petition to Terminate Parental Rights. Upon information and belief, counsel for Petitioners did not amend the pleadings to reflect Respondent's claim to be the biological father or re-publish the notice reflecting Respondent's name.
14. Upon information and belief, the Order Terminating Respondents Parental Rights was entered on May 26, 2010. No copy of the Order was mailed to Respondent. Upon information and belief, Petitioner's counsel did not inform the court that Respondent had come forward as the minor child's biological father and allowed the Termination of Parental Rights to go through based solely on the publication of the notice.
15. Petitioner's service of Respondent via publication was improper under Rule 4(j) of the North Carolina Rules of Civil Procedure:
 - a. Rule 4(j) states, in part, "A party that *cannot with due diligence* be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 750(f)(2) may be served by publication." Respondent was clearly able to be served personally since Petitioner's counsel had just recently served Respondent personally with the notice of the adoption in file number 10 SP 364.
 - b. Rule 4(j) states, in part, "If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication." Petitioners failed to mail to Respondent a copy of the notice of service of process by publication despite being contacted by Respondent a month before the Order Terminating Respondents Parental Rights was entered.
16. No notice of hearing for a hearing on the Termination of Respondents Parental Rights was mailed to Respondent. Rule 6(d) of the North Carolina Rules of Civil Procedure states, "A written motion . . . and notice of the hearing thereof shall be served not later

than five days [excluding weekends and holidays] before the time specified for the hearing."

17. Defendant is entitled to relief as provided in Rule 60(b)(1), (3), (4), and (6) in that:

- a. Petitioners' counsel's conduct in not informing Respondent of the termination of parental rights proceeding, not attempting to serve Respondent personally even though Petitioners' counsel knew of Respondent's identity and location, and not informing the court that Respondent had come forward as the biological father constitutes fraud, misrepresentation, or other misconduct.
- b. The May 26, 2010 Order Terminating Respondents Parental Rights is void. The Court did not have the authority to terminate Respondent's parental rights because there was improper service of process. Furthermore, Respondent did not receive notice of the hearing on the Termination of Parental Rights even after he filed a response in the related adoption associated with this case one month prior to the termination of parental rights hearing.
- c. Extraordinary circumstances exist, and justice demands that the judgment be set aside. Respondent will be irreparably harmed by letting the judgment stand thereby denying him his parental rights to the minor child and making his consent not necessary for Petitioners to move forward with the adoption of the minor child.

WHEREFORE, Defendant prays that the Court:


1. Award relief to Respondent from the order entered on May 26, 2010 and set the order aside;
2. Require that notice of any future proceedings in this action are noticed to Respondent through the undersigned counsel;
3. Tax the costs of this action to Petitioner; and
4. Order such other and further relief for Respondent as the Court deems just and proper.

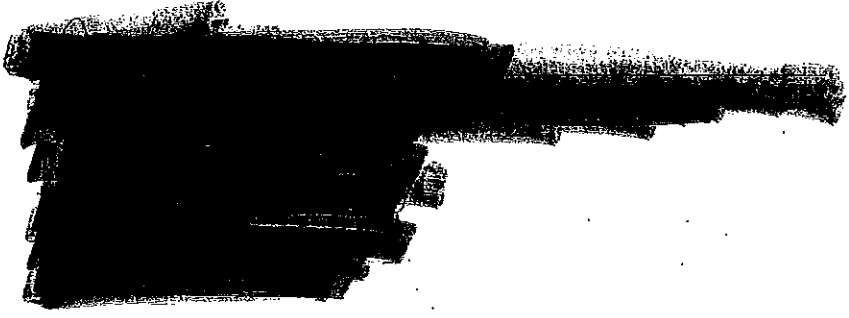
This the 3rd day of December, 2010.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she delivered a copy of the MOTION FOR RELIEF FROM JUDGMENT to the opposing party herein by facsimile and mailing a copy thereof, postage prepaid and properly addressed, to:


Herring Mills and Kratt
P.O. Box 1677
Raleigh, NC 27602
Facsimile: 919-821-1816


12-3-2010
Date

for your life

Bobby D. Mills
bmills@foryourlife.com

April 23, 2010

Re: Adoption of Baby Boy Doe
Wake County Case No.: 10 SP 364

Dear Mr. Jones:

We represent the adoptive parents in the proposed adoption of a child, born January 9, 2010, to [REDACTED] has identified you as the biological birth father of that child.

We are requesting your cooperation in consenting to this proposed adoption. By consenting to the adoption, you will be relieved of all legal rights and obligations, including any obligation for child support.

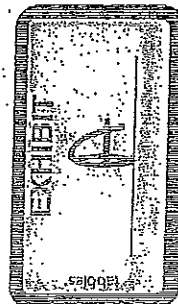
If you agree with this adoption, please review and execute the following documents:

Relinquishment of Minor for Adoption by Parent or Guardian: Enclosed are four originals of a Relinquishment of Minor for Adoption by Parent or Guardian. Please fill in all blanks and sign all four originals of this form before a notary public and return three of the originals to this office as soon as possible using the enclosed self-addressed, prepaid envelope. Please keep the remaining executed original for your records.

Affidavit of Parentage: Also enclosed are two originals of an Affidavit of Parentage. Please sign the two originals of this form before a notary public and return them to this office as soon as possible using the enclosed self-addressed, prepaid envelope.

Health History/Non-Identifying Background Information: Enclosed is a two-part health history form containing a Non-identifying Background Information and Adoption Health History Part I & II. Please complete each of these forms to the best of your knowledge and sign each of these forms before a notary public and return them to this office using the enclosed self-address, prepaid envelope.

Indian Child Welfare Act Affidavit and Power of Attorney: Enclosed are two originals of an Indian Child Welfare Act Affidavit and Power of Attorney. Please complete this form.



Herring Mills & Kratt PLLC

One Over Square, Suite 1800 Raleigh, NC 27601

919.821.1000 fax 919.821.1018

www.foryourlife.com

E. Parker Herring¹

Bobby D. Mills^{1, 2}

E. William Kratt³

Mary Ann Dalton^{4, 5}

Kelly E. Thompson

James P. West⁷

¹Board Certified Specialist in Family Law
²Member American Academy of Adoption Attorneys
³Board Certified Specialist in Estate Planning and Probate Law
⁴Member National Academy Elder Law Attorneys
⁵CFPS - Certified Family Financial Mediator
⁶ORCA - Certified Elder Law Attorney
⁷NC Counsel

and execute it before a notary public and return it to this office in the enclosed self-addressed, prepaid envelope.

If you do not oppose the adoption, but do not acknowledge that these are your children, please sign the enclosed Denial of Paternity form which will require no further action on your part.

Denial of Paternity: Enclosed are two originals. Please sign the two originals of this form before a notary public and return them to this office as soon as possible using the enclosed self-addressed, prepaid envelope.

In addition, we are seeking your cooperating in providing a DNA sample to be used to establish paternity of this child. Our firm has made arrangements with Paternity Testing Corporation for you to contact them to arrange an appointment to provide a DNA sample. This is a non-invasive procedure that usually takes 5-10 minutes. Please contact [REDACTED] to arrange an appointment. Please provide her your name and the name of the birth mother, [REDACTED] when you call.

Your cooperation in this matter is greatly appreciated. Please call me if you have any questions about the execution of these documents or if you do not intend to consent to the adoption of this child. If I am not available, please ask for my paralegal [REDACTED].

Very truly yours,

(1)


Bobby D. Mills

BDM/II
ENCLOSURES

STATE OF NORTH CAROLINA

WAKE County

File No. 10 SP 364

File No.

In the General Court of Justice
Superior Court Division Before The Clerk

IN THE MATTER OF THE ADOPTION OF:

In re: Baby Boy Doe, a minor child

Name of Respondent(s)

NOTICE

G.S. 1-394; 48-2-401

To Each Of The Respondent(s) Named Below:

Name And Address Of Respondent 1

Name And Address Of Respondent 2

A Special Proceeding Has Been Commenced!

Take notice that a Special Proceeding has been commenced against you in the above referenced court and file. The Petitioners are seeking to adopt a male child who was born on January 9, 2010 in High Point, Guilford County, North Carolina to [REDACTED]

In order to participate in and receive further notice of the proceeding, including notice of the time and place of any hearing in this matter, you must prepare and file with the Clerk of Superior Court a response within thirty (30) days after service of this notice.

In the event you fail to respond, the Petitioners will seek a decree of adoption without further notice to you. The decree of adoption will terminate your parental rights to this child and divest you of all rights with respect to the child.

Name And Address of Petitioner's Attorney (If None, Address of Petitioner)

Bobby D. Mills
Two Hannover Square, Suite 1860
P.O. Box 1677
Raleigh, NC 27602
(919) 821-1860

Date

4/23/10

Signature

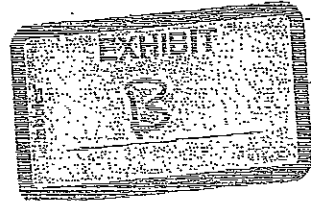


108P 364

I am the ^{FILED} father of [REDACTED]
[REDACTED] I recently found out that my son was up
for adoption, and ^{2010 APR 26 A 458} ^{WAKE COUNTY, NC} I will not approve nor will I
relinquish my child to the adoption agency.
I pray to go through any proceedings or
procedure to get custody of my son, and
bring him back home to a loving environment.

Sincerely,

Grandfather
[REDACTED]



December 10, 2010

From: [REDACTED]
Sent: Monday, December 13, 2010 3:57 PM
To: [REDACTED]
Cc: Bobby Mills
Subject: RE: [REDACTED] Adoption

Donna:

I am out of the office and working from home today.

I can call your office if you would like, but I should tell you that I have considered your proposal, and I am not willing to not move forward on my Rule 60 motion on the TPR. I just think having it stand is too much of a risk to my client and is not procedurally correct.

We are filing the calendar request and notice of hearing tomorrow for January 19th. We have noted your objection.

Thanks,

[REDACTED]

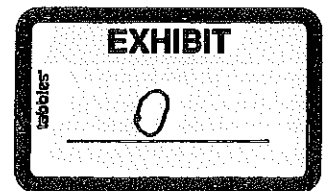
[REDACTED]

Very well. I will file my motion for sanctions under Rule 11 and we can calendar both the same day.

From: [REDACTED]
Sent: Monday, December 13, 2010 5:34 PM
To: Bobby Mills
[REDACTED] Adoption

Bobby:

Filing some stipulation in the adoption case is not the same thing as undoing the improper TPR and I have real doubts about the validity of such a course of action. I should not have to accept



less than the TPR being set aside just because it might alert the court to the service issues in this case.

I did not state in my motion that you or your firm acted unethically, but the misrepresentation to the court about whether a biological father existed and was known is the major ground for undoing the TPR. I do not relish accusing another lawyer of misconduct, but I have to put my client's interests first and this is a compelling ground to have the TPR set aside. I deliberately did not file Rule 11 sanctions, even though I believe I had grounds to do so.

I did not have any time for you to explain before I had to file my Rule 60 motion. As you recall, you insisted that I file my Rule 60 motion within ten days of the consent not necessary hearing, even though there was a major holiday in the middle of those ten days. And I believe you had notice of what the grounds for my Rule 60 motion would be when we argued it at the CNN hearing on November 23rd.

Your belief that I should not have used the misrepresentation prong of Rule 60(b) and that I did not give you enough notice before doing so are not grounds for sanctions against me.

If you want to avoid a hearing on the Rule 60 motion, let's enter into a consent order overturning the TPR. Then we can have a hearing on the merits.

[REDACTED]

[REDACTED]

I am available tomorrow morning to discuss how we can amend the TPR order so that it does not bind [REDACTED]. I have frequently entered orders providing that Mr. X was served with notice in the adoption proceeding and his rights will be addressed in that action. The parental rights of unknowns are terminated. Mr. X's rights are not terminated.

I hope you never have the misfortune to make an honest mistake and be accused of misconduct. If I had wanted to perpetrate a fraud, I would not have served him with notice in the adoption.

[REDACTED]

Sent: Monday, December 1, 2008, 3:34 PM
To: Bobby Mills
Subject: [REDACTED]

Bobby:

Filing some stipulation in the adoption case is not the same thing as undoing the improper TPR and I have real doubts about the validity of such a course of action. I should not have to accept less than the TPR being set aside just because it might alert the court to the service issues in this case.

I did not state in my motion that you or your firm acted unethically, but the misrepresentation to the court about whether a biological father existed and was known is the major ground for undoing the TPR. I do not relish accusing another lawyer of misconduct, but I have to put my client's interests first and this is a compelling ground to have the TPR set aside. I deliberately did not file Rule 11 sanctions, even though I believe I had grounds to do so.

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Your belief that I should not have used the misrepresentation prong of Rule 60(b) and that I did not give you enough notice before doing so are not grounds for sanctions against me.

If you want to avoid a hearing on the Rule 60 motion, let's enter into a consent order overturning the TPR. Then we can have a hearing on the merits.

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Monday, December 13, 2010 7:40 PM
To: Bobby Mills [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED] adoption

I am sorry, but I am not comfortable with leaving the TPR in place.

You (or someone at your firm) might have made an honest mistake, I certainly hope that is the case. I have made mistakes. Bu, if it was a mistake to enter the TPR, when you found out that a mistake had been made, you should make it right and undo the TPR. It's what I would do if I had made a mistake and not gotten proper service.

[REDACTED]

[REDACTED]

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

2011 JAN -7 PM 3:27

WAKE COUNTY, C.S.C.

BY: _____

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NO. 10 JT 90

REPLY & MOTION

Petitioner hereby replies to the Motion for Relief from Judgment filed on December 3, 2010, on behalf of [REDACTED] and moves the Court for an order amending the Order Terminating Parental Rights entered on May 26, 2010, terminating the parental rights of Calvin or Kevin or Any Unknown Parent or Possible Parent [REDACTED]. For clarity, since the biological parents have the same last name, even though they are not married, we will refer to them by their first names [REDACTED]. In support of this motion, the Petitioner shows the court as follows:

1. [REDACTED] is the mother of the minor child who is the subject of this action.

2. On January 11, 2010, [REDACTED] rendered custody of the minor child to Petitioner and executed a relinquishment, pursuant to G.S. § 48-3-701 et. seq., for purposes of the adoptive placement of the minor child with an adoptive couple to be chosen by the agency.

3. On January 20, 2010, Petitioner transferred physical custody of the minor child to an adoptive couple.

4. On January 20, 2010, the prospective adoptive parents filed a petition in Wake County, North Carolina to adopt this child, Wake County file number 10 SP 364.

5. [REDACTED] identified a man known to her only as "Calvin or Kevin" as the biological father of this child. [REDACTED] represented that her relationship with Kevin or Calvin was limited to the single occasion when conception occurred. She repeatedly denied knowing the full identity of the birth father, his contact information and his whereabouts. [REDACTED] did not identify [REDACTED] as a potential father of her child.

EXHIBIT

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6. [REDACTED] as not married at the time that this child was born or within the ten months immediately preceding the birth of this child or prior to the filing of the Adoption Petition. [REDACTED] has never been married to [REDACTED] and is not related to him.

7. At the time of placement:

- a. Paternity of this child had not been determined judicially or by scientific means;
- b. No person had established paternity of this child by affidavit which has been filed with the central registry maintained by the Department of Health and Human Services; and
- c. No person had legitimated the child pursuant to the provisions of G.S. 49-10 or filed a petition for that purpose.

8. [REDACTED] asserted in her sworn affidavit which was attached to and incorporated in the Petition for Termination of Parental Rights that no person purporting to be the father of her child had provided substantial financial support or consistent care to Joyce or the child.

9. The Petition for Termination of Parental Rights was filed on March 22, 2010. Petitioner sought an order terminating the parental rights of Calvin or Kevin or Any Unknown Parent or Possible Parent of [REDACTED] of Herring Mills & Kratt, PLLC, represented Petitioner. [REDACTED] was assigned as provisional counsel for Calvin or Kevin.

10. Because [REDACTED] denied knowing the full identity of the birth father, his contact information and his whereabouts and [REDACTED] did not identify [REDACTED] as a potential father of her child, on March 25, 2010, Petitioner filed a Motion to Permit Service by Publication with supporting affidavits. On March 31, 2010, an Order Permitting Service by Publication was entered.

11. A Notice to the Respondents Calvin or Kevin or Any Unknown or Possible Parent in the form required by G.S. §48-2-402, was published on April 7, 14 and 21, 2010, in the *Herald Sun*, a newspaper qualified for legal advertising in accordance with G.S. §§ 1-597 and 1-598 and circulated in the Durham, North Carolina area. Durham was the area where [REDACTED] asserted conception occurred.

12. The time allowed for the Respondents to respond to the notice by publication expired on May 17, 2010. No purported birth father filed a response to the notice of the termination proceeding. Subsequently, [REDACTED] admitted in his verified custody complaint that he was a resident of Durham County at all times when that the publication appeared in the *Herald Sun* which is published in the vicinity of Durham County, North Carolina.

13. At the time the publication commenced, Petitioner had no knowledge of [REDACTED] existence or that he was a potential father. Dalroyce had not been identified as a potential father of this child by [REDACTED]

14. After publication had commenced, in late April 2010 [REDACTED] contacted Petitioner and asserted that he believed that he was the father [REDACTED] child.

15. [REDACTED] did not respond to the notice of the termination proceeding. As an unknown parent or possible parent he was properly served with notice of this action. If he had responded, he would have had representation in this action.

16. Notwithstanding the pending termination proceeding, when [REDACTED] subsequently identified himself and asserted that he may be the father, the prospective adoptive parents had a duty to serve [REDACTED] with notice of the adoption pursuant to G.S. §§ 48-2-401(c)(3) and 48-2-402. The statute provides:

§ 48-2-401. Notice by petitioner

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

...

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

....

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's

parent, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

...

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing.

17. On April 23, 2010, a Notice of the adoption proceeding in 10 SP 364 was issued to [REDACTED]. On April 24, 2010, [REDACTED] was personally served with notice of the adoption action. On April 26, 2010, he filed a response in 10 SP 364.

18. On May 26, 2010, [REDACTED] appeared for Petitioner in this action and the Court entered an order terminating the parental rights of Calvin or Kevin or Any Unknown Parent or Possible Parent of [REDACTED].

19. It is specifically denied that Petitioner had any intention to mislead this Court with regard to [REDACTED] identity, whereabouts, or potential claims when the Order Terminating Parental Rights was entered on May 26, 2010. That order terminated the parental rights of Calvin or Kevin or Any Unknown Parent or Possible Parent of [REDACTED].

20. It is specifically denied that Petitioner had any intention to deprive [REDACTED] of the opportunity to be heard on the merits of his claims and defenses. To the contrary, promptly upon learning [REDACTED] identity and whereabouts, the adoptive parents served him with notice of the adoption as they are required to do.

21. There is no factual basis to support [REDACTED] assertions that Petitioner's actions constitute fraud, misrepresentation or other misconduct. Petitioner moves the Court to strike that portion of [REDACTED] motion.

22. Petitioner only named unknown parents in the termination action because an agency is required to file a termination action to address the rights of unknown parents pursuant to

N.C.G.S. § 48-2-402 (c). Adoptive parents served notice on [REDACTED] an identified parent in the adoption action as required by G.S. §§ 48-2-401(c)(3) and 48-2-402.

23. Petitioner had no duty to amend the termination action to include [REDACTED] or any other identified father. Further, had Petitioner moved to amend the termination petition and join [REDACTED] as a respondent in the termination action, doing so would result in two competing actions both addressing [REDACTED] parental rights. Amending the termination petition would duplicate the litigation and create the risk of inconsistent judgments. Even if [REDACTED] had participated in the termination proceeding and even if the Court declined to terminate his parental rights, it is still possible that [REDACTED] consent may not be necessary under Chapter 48 and the adoption could still proceed over his objection even though his rights had not been terminated.

24. Along with the Notice of the adoption action served on April 24, 2010, [REDACTED] was offered the opportunity to submit to a DNA test at adoptive parent's expense. He did not respond and did not take any steps to submit a DNA sample until October 2010.

25. Other than filing an objection to the adoption on April 26, 2010, [REDACTED] took no further action until September 24, 2010, when he filed a child custody action in 10 CVD 16180. Despite being offered the opportunity to confirm paternity at adoptive parents' expense in April, he took no action until October.

26. After his response on April 26, 2010, [REDACTED] took no action to assert his rights or inquire about the child until September 24, 2010. Again, he took no action to confirm paternity between April and October.

27. After being contacted by [REDACTED] Petitioner and adoptive parents conducted extensive discovery in an attempt to verify [REDACTED] assertions and determine whether his consent to the adoption was necessary, including requests for production of documents, subpoenas to record custodians for bank and employment records, requests for certified copies of eviction proceedings and judgments for unpaid rent, certified copies of records of public assistance paid to [REDACTED] among others.

28. Discovery was necessary to determine whether [REDACTED] had provided financial support to [REDACTED] the child and met the other requirements of G.S. §§ 48-3-601 and 603 to

determine whether his consent to the adoption was in fact necessary. If [REDACTED] failed to meet those requirements, his consent would not be necessary and the adoption could proceed over his objection.

29. The documents obtained made it apparent that [REDACTED] had not provided substantial financial support for [REDACTED] the child within the meaning of G.S. §7B 1111(a) or reasonable and consistent support within his means as required by G.S. §48-3-601.


30. The adoptive parents filed a motion in the adoption action seeking an order that [REDACTED] consent is not required for failure to state a claim based upon the termination order. On December 3, 2010, the adoptive parents set a hearing to determine whether [REDACTED] consent was required.

31. Notwithstanding [REDACTED] failure to respond in the termination action [REDACTED] should be heard on the merits of his defenses in the adoption action (Wake County file number 10 SP 364).

WHEREFORE, Petitioner moves the Court to:

1. Strike that portion of [REDACTED] motion which asserts that Petitioner's actions constitute fraud, misrepresentation or other misconduct; and
2. Amend the order entered on May 26, 2010 to relieve [REDACTED] of its operation in order that he may proceed in the adoption action to be heard on his claims and defenses.

This the 7th day of January, 2011.



Bobby D. Mills
NC State Bar No. 13044
Herring Mills & Kratt, PLLC
Post Office Box 1677
Raleigh, North Carolina 27602
Telephone: (919) 821-1860
Attorney for Petitioner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 10 JT 90

IN RE: K.M.J., a minor child


CERTIFICATE OF SERVICE

This is to certify that the REPLY & MOTION was duly served upon all parties by depositing a copy thereof in the United States mail, postage prepaid, addressed as follows:

[REDACTED]

This the 7th day of January, 2011

HERRING MILLS & KRATT, PLLC


Bobby D. Mills
NC State Bar No.: 13044
Two Hannover Square, Suite 1860
Post Office Box 1677
Raleigh, North Carolina 27602
Telephone: (919) 821-1860
Attorney for Petitioner

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NO. 10 SP 364

IN RE THE MATTER OF THE
ADOPTION OF BABY BOY DOE

AMENDED MOTION FOR CONSENT
NOT NECESSARY
WAKE COUNTY, NC

Petitioners hereby amend the motion filed on November 8, 2010 by replacing it in its entirety with the following motion. Petitioners move the Court for an order determining that the consent of Respondent [REDACTED] to this proposed adoptive placement is not required pursuant to G.S. §§ 48-3-601(2)4 and 48-3-603(a).

WHEREFORE, Petitioners pray the Court:

1. Issue an order that the consent of Respondent [REDACTED] is not required for Petitioners to adopt the said child.
2. Grant Petitioners such other and further relief as may be just and proper.

This the 14th day of January, 2011.

HERRING MILLS & KRATT, PLLC

B. Mills

Bobby D. Mills
NC Bar # 13044
Two Hannover Square, Suite 1860
Post Office Box 1677
Raleigh, North Carolina 27602
Telephone: (919) 821-1860
Attorney for Petitioners

EXHIBIT

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Amended Motion for Consent Not Necessary was duly served upon all parties by depositing a copy thereof in the United States mail, postage prepaid, addressed as follows:



This the 14th day of January, 2011.

HERRING MILLS & KRATT, PLLC

B-D-M

Bobby D. Mills
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Raleigh, North Carolina 27602
Telephone: (919) 821-1860
Attorney for Petitioners

1 NORTH CAROLINA GENERAL COURT OF JUSTICE
 2 WAKE COUNTY DISTRICT COURT DIVISION
 3 10 CVD 016180

4 PLAINTIFF,

5 VS.

7 DEFENDANT,

8 A CHILD'S HOPE OF NORTH
 9 CAROLINA, LLC, CHILD
 10 PLACING AGENCY,

11 DEFENDANT,

12 JOHN AND JANE DOE,

13 DEFENDANT.

14 The above-captioned case, heard on
 15 January 6, 2011, in the District Court,
 16 Wake County, Raleigh, North Carolina,
 17 Courtroom 8B, before the Honorable Lori
 18 Christian, judge presiding, the
 19 following proceedings were had, to wit:

20 APPEARANCES OF COUNSEL

21 On behalf of the Plaintiff:

22 On behalf of the Defendants:

23 E. Parker Herring
 24 Bobby D. Mills

25 Herring, Mills and Kratt
 PO Box 1677
 Raleigh, North Carolina 27602

EXHIBIT

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P R O C E E D I N G S

THE COURT: Okay. I'm sorry?

[REDACTED]: Judge, I --

MR. MILLS: This is our motion.

[REDACTED]: It is. If I can
just -- one last preliminary issue just
so we --

THE COURT: That's fine.

[REDACTED]: I want this cleared
up.

THE COURT: It's not a problem.

[REDACTED]: I recognize that,
you know, Your Honor probably doesn't
read any of this in advance, but I'm
asking if it -- we're going to get into
some technical, very deep-oriented
arguments.

THE COURT: Uh-huh.

[REDACTED]: Could you please
take a minute and read the Complaint in
this matter?

THE COURT: Sure.

MR. MILLS: We object. There
are erroneous matters that should be
stricken from that Complaint. They have

1 attempted to attach an affidavit from
2 [REDACTED]. They know that that's
3 contrary to the Rules. There is no
4 evidence that they have made any effort
5 to have her present today. There is no
6 exception under the hearsay rule. We
7 would move to strike her affidavit and
8 any statements in his Complaint that are
9 hearsay from her.

10 [REDACTED]: Judge, she was
11 noticed to be here today. She's been
12 served. I don't know -- I don't have
13 any contact with her. It's not like I'm
14 involved. She's the opposing party on
15 this side. But, nonetheless, it's an
16 affidavit. It's under oath. It's
17 attached to the Complaint. Judge, I'm
18 just asking that you read the Complaint.
19 My client signed that.

20 MR. MILLS: [REDACTED] knows
21 that that affidavit is not permissible
22 by the Rules, and it should be
23 stricken. There is no evidence that
24 [REDACTED] has done anything to require
25 [REDACTED] presence by way of subpoena.

1 We have attempted to do that and
2 have failed. Therefore, if anybody's
3 entitled to offer hearsay from her, it
4 is us, not [REDACTED]

5 THE COURT: Okay. To require
6 whose presence?

7 [REDACTED]: The biological
8 mother, Your Honor:

9 THE COURT: Is that [REDACTED]

10 [REDACTED]: That is [REDACTED]

11 THE COURT: She's a party?

12 [REDACTED]: She is a party.

13 THE COURT: Has she been served?

14 [REDACTED]: She has.

15 THE COURT: So what else does
16 she have to do to get her presence in
17 the courtroom?

18 MR. MILLS: I think she has to
19 serve her with a subpoena.

20 [REDACTED]: Judge, I just --

21 MR. MILLS: If she wants to call
22 her as a --

23 THE COURT: A party?

24 [REDACTED]: -- have to give a
25 notice.

1 MR. MILLS: If she wants to call
2 her as a witness --

3 THE COURT: Okay.

4 MR. MILLS: -- Your Honor --

5 THE COURT: Okay.

6 MR. MILLS: -- and that's what
7 she's doing --

8 THE COURT: I'm going to read
9 the Complaint.

10 MR. MILLS: -- by submitting the
11 affidavit --

12 THE COURT: Okay. I'm going to
13 read the Complaint. It's part of her
14 (unintelligible) file.

15 (PAUSE.)

16 THE COURT: Is there a
17 termination of parental rights
18 proceeding filed already --

19 MR. MILLS: Yes.

20 THE COURT: -- or is it --

21 [REDACTED] Yes. Your -- Your
22 Honor, we have a brief to hand to
23 opposing counsel and up to you. It
24 gives the factual allegations as they
25 stand, and it also includes an -- an

1 update from October because there's been
2 occurrences since then.

3 THE COURT: So -- So wait a
4 minute. I just want to know, is there
5 -- has the TPR been granted already or
6 is there one --

7 [REDACTED]: Yes.

8 THE COURT: -- standing?

9 MR. MILLS: There is a --

10 [REDACTED]: Judge --

11 MR. MILLS: -- TP --

12 [REDACTED] -- I have never
13 seen a --

14 MR. MILLS: If I --

15 [REDACTED] -- TPR --

16 THE COURT: Just answer my
17 question. Has his parental rights been
18 terminated? That's simple. Yes or no?

19 MR. MILLS: There is --

20 [REDACTED]: I --

21 MR. MILLS: -- an action and an
22 order that was entered that addressed
23 all unknown parents. At the time the
24 action was filed --

25 THE COURT: Okay.

1 MR. MILLS: -- he was among that
2 group of unknown parents. There is a
3 motion pending to set aside that order
4 as to him. That is set for hearing on
5 the 19th in front of Judge Bowsman.

6 THE COURT: That's all I wanted
7 to know. In front of who?

8 MR. MILLS: Judge --

9 [REDACTED] Judge Bowsman.

10 MR. MILLS: -- Bowsman.

11 THE COURT: That's all I wanted
12 to know.

13 [REDACTED] And -- And, Judge,
14 the only thing is, I have never -- those
15 files are sealed. I've never seen the
16 TPR file. I don't know. I've never
17 seen any paperwork. My client's never
18 been served with anything. So I can't
19 represent to you that I even know that
20 it exists. I've asked for a copy of it,
21 and it has not been granted. So I had
22 the file brought down for you today,
23 that you, as an -- you're the judge.
24 You can look at it.

25 If you, in fact, believe that

1 that applies to this particular case, I
2 lose. It's stayed.

3 THE COURT: So --

4 [REDACTED]: I get that. But
5 I've never seen it to be able to know
6 that for sure.

7 THE COURT: Let -- Let me hear
8 their motion to stay, and then I'm going
9 to -- is there anything other
10 preliminary? I've read the -- I've read
11 the Complaint.

12 [REDACTED]: As a preliminary
13 matter, no, Your Honor.

14 THE COURT: Okay. Go ahead.

15 MR. MILLS: May I hand up my
16 group, Your Honor?

17 THE COURT: Sure.

18 [REDACTED]: And, Judge, I would
19 object. They're required to give me
20 notice of that. I believe it's 48 hours
21 in advance pursuant to the North
22 Carolina Rules of Civil Procedure, and
23 I've never seen it. The service of
24 briefs is --

25 MR. MILLS: I --

1 [REDACTED] -- in actions in
2 Superior Court -- Court, it is Rule 5,
3 sub A1, and that's 48 hours' notice is
4 specifically denoted to Superior Court
5 in the North Carolina Rules, Your Honor.

6 THE COURT: Okay. Give her a
7 copy. I'm -- I'm -- I'm going to read
8 it, skim it, and then --

9 MS. GRABER: Okay.

10 (PAUSE.)

11 THE COURT: Okay.

12 MR. MILLS: We're asking The
13 Court to stay because (unintelligible)
14 the juvenile court as already exercised
15 jurisdiction and has continued with
16 jurisdiction, and the clerk with
17 original exclusive jurisdiction over
18 adoptions has exercised jurisdiction
19 over this action and this child. Both
20 those matters are pending.

21 In the event that there is a
22 disputed legal or factual issue in an
23 adoption proceeding, the matter is
24 transferred to District Court General
25 Division for resolution of

1 (unintelligible) the contested issues.

2 It would appear to me that it
3 would be proper to allow juvenile court
4 to address the Motion to Relieve
5 [REDACTED] from the Termination Order and
6 to address the adoption petition and our
7 motion in -- within that which says
8 [REDACTED] consent is not required in
9 order for this adoption to go forward.

10 Next, if this Court exercises
11 jurisdiction over a custody matter, we
12 run the risk of inconsistent verdicts.
13 You could grant custody or visitation.
14 [REDACTED] does not currently have any
15 relationship with this child.

16 Notwithstanding having granted
17 or created that relationship, the
18 juvenile division could either terminate
19 his rights or find that his consent is
20 not required to the adoption, which
21 means that the decree will be entered
22 and his rights will be terminated.

23 That just doesn't seem like the
24 appropriate result and leaves us with
25 inconsistent verdicts. It creates a

1 relationship that does not currently
2 exist and it -- a relationship that
3 would be at risk of being terminated,
4 and that cannot be in the best interest
5 of the child.

6 Just as a matter of -- of
7 judicial economy, the same factual
8 issues are going to be argued in the
9 custody case and at either a termination
10 or the Chapter 48 proceeding in front of
11 that juvenile court judge. We're going
12 to be talking about did [REDACTED] meet
13 that threshold standard or not.

14 We will have to argue those same
15 facts if you proceed in the custody
16 case; again, the risk of inconsistent
17 verdicts on literally the same facts in
18 virtually the same matter. All right.

19 Finally, if you allow either
20 custody or visitation, you have
21 materially changed the legal posture of
22 the parties. You have created a
23 relationship that does not currently
24 exist. That changes the facts when we
25 go to determine whether [REDACTED] gets

1 the benefit of the parental presumption
2 or not. You've changed the factual
3 standard under which the parties have to
4 proceed. It's not appropriate to do
5 that. It's not necessary to do that.

6 The policy set out in Griffin
7 (phonetic) is good law. Griffin's never
8 been reversed or statutorily changed.
9 It says we should allow those
10 proceedings that address the existence
11 of the relationship (unintelligible)
12 adoption termination to proceed to
13 conclusion, first, because they result
14 in a permanent change for the child.
15 Custody is never permanent by its very
16 nature. Is it appropriate, therefore,
17 to address those issues first? We don't
18 want to create --

19 THE COURT: But aren't I --

20 MR. MILLS: I'm sorry.

21 THE COURT: -- contributing to
22 the basis for the termination if I don't
23 address the custody issue?

24 MR. MILLS: No. The termination
25 action is based solely on what I call

1 the unwed daddy records. It's not based
2 on abandonment. We have no intention of
3 filing any action addressing or -- or
4 asserting to The Court that [REDACTED]
5 has abandoned this child for six months
6 preceding the filing of a petition or an
7 amended petition. We have no intention
8 of doing that.

9 It's -- The existing termination
10 action is based solely on unwed daddy
11 records, which are very similar to but
12 slightly different from the grounds in
13 Chapter 48 which determine whether his
14 consent's necessary or not.

15 THE COURT: What are the grounds
16 for unwed -- I don't remember any
17 specific grounds --

18 MR. MILLS: Under 7B11-11A, what
19 he would -- we would have to show to
20 terminate his rights under 7B is that he
21 didn't marry [REDACTED], and it's
22 uncontested, he didn't do that. He
23 didn't legitimate this child. It's
24 uncontested. He didn't do that. He
25 didn't file action to legitimate. He

1 hasn't done that. It's uncontested. He
2 hasn't filed an affidavit with the State
3 asserting parentage of the child unless
4 he's done it very recently and I don't
5 know about it.

6 All right. So that only leaves,
7 did he provide substantial financial
8 support or consistent care? Those
9 issues are virtually exactly the same as
10 the issues under Chapter 48. Did he
11 acknowledge, unequivocally? Did he
12 communicate regularly and consistently
13 with Mom or try to? And did he give her
14 financial assistance or tangible support
15 during her pregnancy consistent with his
16 means and ability? Very similar
17 standards.

18 Those issues need to be heard in
19 the juvenile court and need to be heard
20 before you hear custody because those
21 same facts are going to determine
22 whether he gets to benefit from the
23 parental presumption or whether he has
24 failed to meet the -- the test for the
25 parental presumption.

1 Has he done things that make him
2 unfit or has he done things that are
3 inconsistent with the presumption that
4 he'll act in the best interest of the
5 child? If he fails to meet that
6 standard -- and that's what 7B in
7 Chapter 48 essentially tests, did he
8 meet that standard? If he fails to meet
9 the standard, then he is contending
10 against these adoptive parents on equal
11 footing. He is no longer superior and
12 does not benefit from the presumption.

13 THE COURT: And is his -- what
14 is his role in these proceedings on the
15 -- in front of Judge Bowsman?

16 [REDACTED]: And, Judge, I --
17 may I be heard on that?

18 THE COURT: Uh-huh

19 [REDACTED] Because this is the
20 thing. My client has never been served
21 with a TPR, and -- if I may finish -- it
22 was put in the newspaper on or about
23 March 31st -- and I have a copy of it.
24 He was ordered to respond by May 17th.
25 He responded to Mr. Mills April 26th.

1 He responded to The Court on April 26th
2 in the adoption proceeding and said, I'm
3 the biological father. I'd like to have
4 my child. Yet Mr. Mills never served
5 him with a TPR, just relied on this
6 publication, never informed The Court
7 that he received any notice from my
8 client and proceeded on this TPR.

9 And, Judge, if I may approach,
10 I'd like for you to read a copy of the
11 Motion that -- the Rule 60 Motion that's
12 pending on the TPR.

13 MR. MILLS: No. I object. I
14 want to be heard in response to what she
15 just said, if you will allow me to do
16 so.

17 THE COURT: Go ahead.

18 MR. MILLS: There were two
19 different lawyers working on these facts
20 at that point in time. Yes, we --

21 THE COURT: Two different
22 lawyers in your firm?

23 MR. MILLS: Yes. Unfortunately,
24 the left wasn't talking to the right.

25 [REDACTED] swore in an affidavit that

1 this child was conceived with a father
2 she knew only as Calvin or Kevin
3 (unintelligible). So we published in
4 that action to Calvin/Kevin and unknown,
5 which included everybody else in Durham
6 County including at that time [REDACTED].

7 Now, [REDACTED] correct that
8 when [REDACTED] told us, well, I didn't
9 tell you the truth, I lied to you, it
10 wasn't Calvin, it wasn't Kevin, it was
11 really [REDACTED]. I did what I'm
12 supposed to do. I served [REDACTED] with
13 a notice in the adoption proceeding. I
14 had frankly forgotten that the TPR was
15 working its way through publication and
16 hearing. I plain forgot. For that, I
17 apologize.

18 What they have asked The Court
19 to do is set aside that order. What I
20 intend to do is say to The Court, I'm
21 going to withdraw the motion that says
22 he doesn't have standing to contend for
23 custody because his rights were
24 terminated. We're going to withdraw
25 that motion because I'm going to ask the

1 juvenile court to amend its order and
2 say, this order as to unknowns is good,
3 as to unknowns, but it does not affect
4 Mr. Jones' rights. That's not uncommon.
5 It's very common to terminate unknowns
6 in juvenile court and proceed as to
7 known people like [REDACTED] under
8 Chapter 48.

9 Now, it happens that that
10 Chapter 48 proceeding is going to end up
11 right back in front of Judge Bowsman.
12 He's going to have his day in court on
13 those issues.

14 THE COURT: Mr. Mills, you're
15 telling me that because you have two
16 different people working in a firm that
17 this man is going to possibly lose any
18 rights --

19 MR. MILLS: No, ma'am.

20 THE COURT: -- he ever has --

21 MR. MILLS: No, ma'am.

22 THE COURT: -- to his child?

23 MR. MILLS: No, ma'am.

24 THE COURT: I mean, are -- are
25 you really --

1 MR. MILLS: No, ma'am.

2 THE COURT: I mean, that's what
3 I heard you say, is --

4 MR. MILLS: Well, let me
5 clarify.

6 THE COURT: -- we have two
7 different people and I just plain
8 forgot. That's what I heard you say.

9 MR. MILLS: I have -- I --

10 THE COURT: I mean, I'm not
11 putting words in your mouth, I don't
12 believe, and this stinks. Okay? And
13 this is really --

14 MR. MILLS: Now --

15 THE COURT: Is there anything
16 else to be said? Because now I've got
17 to do the research and make the
18 decision.

19 MR. MILLS: I just --

20 THE COURT: I am very
21 uncomfortable with this, Mr. Mills. And
22 what it feels like to me, Mr. Mills, is
23 you are going to proceed like a train on
24 a track and terminate his --

25 MR. MILLS: No, ma'am.

1 THE COURT: -- rights.

2 MR. MILLS: No, ma'am.

3 THE COURT: So then why -- why
4 is there any -- why is there any
5 termination still going forward, period?

6 MR. MILLS: Well, there's not.
7 What -- What I was -- Maybe I did not
8 explain it clearly. What -- What I
9 intend to do in front of Judge Bowsman
10 is -- is say, amend your order. I don't
11 want you to terminate [REDACTED] rights.
12 We didn't intend to do that. It was an
13 oversight as to him because he came to
14 us very, very late, just days before the
15 final publication. So I served him a
16 notice in Chapter 48, as I'm required to
17 do. I, frankly, just plain forgot about
18 the possibility of amending the TPR to
19 address him in that action, as well. If
20 I had, he would be a Respondent in two
21 actions at the same time. It was not my
22 intention to deprive [REDACTED] of a
23 hearing on the merits of his case.

24 THE COURT: And in the meantime,
25 he shouldn't have any right to visit

1 with his child? With his child?

2 MR. MILLS: Judge, you, or
3 somebody like Judge Bowsman, has to
4 determine whether he's met that
5 threshold standard as a fit parent.
6 That's what 48 sets out, very similar to
7 what 7B sets out. And what I'm
8 suggesting to you is that to allow him
9 contact --

10 THE COURT: Now, I'm not as
11 familiar with 48 as I am with 7B and I
12 -- Mr. Mills, this feels -- this just
13 -- for lack of a better word, it just
14 stinks. This is not right. This is --
15 We have a child that was born in
16 January. If I just look on the face of
17 the Complaint, you sent him a letter
18 that says, enclosed are (unintelligible)
19 originals of relinquishments of minor
20 adoption of (unintelligible). Please
21 fill in all the blanks inside all the
22 originals. You sent him this on April
23 -- in April --

24 MR. MILLS: And --

25 THE COURT: -- after you make

1 the publication, and then you all still
2 go forward. And you can sit there and
3 tell me y'all didn't know but you should
4 have known? And y'all still go forward
5 and terminate his rights, and now he's
6 having to fight to see a child that is
7 biologically his?

8 MR. MILLS: No, ma'am. We
9 didn't intend to terminate the known --

10 THE COURT: But you --

11 MR. MILLS: -- father's rights.

12 THE COURT: -- did.

13 MR. MILLS: Well --

14 THE COURT: You did.

15 MR. MILLS: I -- I don't think
16 it's fair to [REDACTED] to do that. I'm
17 asking The Court to relieve him of that
18 order. I don't want to do that to him.

19 THE COURT: But you've already
20 done it to him, and time is marching on.
21 And y'all are playing with a child that
22 is now 1. When he came back and said,
23 this is my child, the child was only
24 four months old. And now six more --
25 that's correct?

1 MR. MILLS: Yes, ma'am, that's
2 correct.

3 THE COURT: Okay. And now eight
4 more months have ticked off and he is
5 now getting bonded with these adoptive
6 parents and he is still sitting here
7 saying, I want to see my child.

8 And now you're telling me
9 because you all went forward and filed
10 something in another court and y'all
11 didn't stop it when you knew he existed
12 -- y'all didn't stop it. It was
13 already filed, but you didn't stop it.
14 And you went forward and you terminated
15 him, and now you got to go back to Judge
16 Bowsman and, say, I want to relieve him
17 from this termination, only to terminate
18 him under another chapter.

19 It's wrong, Mr. Mills. You
20 might be able to do it legally, but it
21 is morally, it is ethically, it is
22 humanly wrong, and I am done with this.
23 I am going to -- I am going to research
24 it. I'm going to determine whether I
25 can set it aside, and I'm -- I'm -- I am

1 disgusted by this. I am disgusted that
2 we can even do this to this man. I'm
3 done. Out.

4 (END OF PROCEEDINGS.)
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CERTIFICATE

State of North Carolina
County of Durham

I, Jonathan Cunningham, a notary public
in and for the State of North Carolina,
do hereby certify that this transcript
is a true and accurate transcription of
the testimony on said tapes.

I further certify that I am not counsel
for, nor in the employment of any of the
parties to this action; that I am not
related by blood or marriage to any of
the parties, nor am I interested, either
directly or indirectly, in the results
of this action.

This the 10th day of February, 2011.

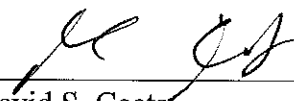
Jonathan Cunningham

CERTIFICATE OF SERVICE

The undersigned attorney for Defendant hereby certifies that on this day the foregoing Answer was served upon the counsel of record for the Plaintiff in this action by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

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The North Carolina State Bar
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Attorney for Plaintiff

This the 5 day of September, 2014.



David S. Coats